

MIDDLETOWN ZONING BOARD OF REVIEW MINUTES OF JUNE 28, 2011

The monthly meeting of the Middletown Zoning Board of Review was held on June 28,2011 at 7:00 P.M.. Present at this meeting were voting members- Chairman- Tom Silveira, Vice-Chairman- Peter Van Steeden, Secretary-Lucy Levada, Steve MacGillivary, Charles Vaillancourt

Alternates- 1ST- James Miller- 2nd- Nicholas Pasyanos- 3RD -Orlin Gambrell. Assistant Town Solicitor- Turner Scott and Town Zoning Officer- Jack Kane.

A motion was made by Peter Van Steeden and second by CharlesVaillancourt to accept the secretary's minutes of May 24,2011. Motion granted 5-0.

CONTINUANCES/ WITHDRAWALS:

1. Petition of- Recycling Associates, Inc.
(Appeal)-----July 26,2011
2. Petition of- Louis Von Mayrhauser Strauss
-----July 26,2011
3. Petition of-
Link-----July
26,2011

4. **Petition of- Creative Properties,**
Inc.-----July 26,2011
5. **Petition of - Kenneth**
Alves-----July 26,2011
6. **Petition of- Bonnie Zimble K J's Pub**
(2)-----July 26,2011

FULL HEARINGS;

1. Petition of: Joseph & Theresa Ashness- 81 Ellery Avenue- Middletown, R.I. -(owner)- for a Variance from Sections 603,701,& 803G- to construct a covered front & rear porch with a right side yard setbacks 6'-3" where 15' is required. Said real estate is located at 81 Ellery Ave . And further identified as Lot 115 on Tax Assessor's Plat 115 SE.

A motion was made by Peter Van Steeden and second by Steve MacGillivray to grant the petition Petition granted 5-0

2. Petition of: Colin McClennan - 174 Allston Ave.- Middletown, R.I.-(owner)- Colin & Renee McClenna (applicant) for a Variance from sections 603, 701, & 803G- to construct an addition over existing dwelling with a left and right side yard setback of 8' where 15' is required. Said real estate is located at 174 Allston Ave. And further identified as Lot 28 on Tax Assessor's Plat 116 NE.

Mr. McClenna stated he is going over the existing house and staying

within the original foot print and presented # Exhibit A- revised copy of house plan

A motion was made by Charles Vaillincourt and second by Peter Peter Van Steeden to grant the petition with the following conditions

1. That t he house stays a single family

2. And stays with # Exhibit A- petition granted 5-0

3. Petition of: Craig & Annie Schmidt- 12 Draper Ave.- Middletown, R.I.- for a Variance from Section 603,701,& 803G-to construct a 17'x25' addition with a left side yard setback of 13.1' and

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A right side yard setback of 12.2' where 15' is required and construct a new entry and basement stair enclosed with a left side yard setback of 6.2' where 15' is required. Said real estate is located at 12 Draper Ave. And further identified as Lot 27 on Tax Assessor's Plat 121

A motion was made by Peter Van Steeden and second by Charles Vaillincourt to grant the petition . Petition Granted 5-0

4. Petition of: Bonnie Zimble- PO Box 3129- Newport,R.I.- (owner) K.J.'S Pub Inc.- 59 Aquidneck Ave. Middletown, R.I. (Applicant) - by their Attorney Jeremiah C. Lynch, 111- for a Special Use Permit from Section 602- to permit additional outside seating where alcohol will be served. Said real estate is located at 59 Aquidneck Ave.and further identified as Lot 169 on Tax Assessor's Plat 115 SE

5. Petition of : Bonnie Zimble- PO Box 3129- Newport R.I.-(owner) K.J.'S Pub Inc.-59 Aquidneck Ave. -Middletown' R.I. (Applicant) -By their Attorney Jeremiah C. Lynch 111- for a Variance Sections 603, 701, 803G & 1304- to construct a roof over south side entry door with a side yard setback of 8' where 20' is required, to construct an open pergola roof over proposed outdoor seating with a side yard setback of 0' where 20' is required, increase lot coverage to 29% where 25 % is allowed and increase capacity by 32 people requiring 10 additional parking spaces where 0 additional parking spaces are provided. Said real estate located at 59 Aquidneck Ave. And further identified as Lot 169 on Tax Assessor's Plat 115 SE.

This case is continue from the May 24,2011 Special Meeting with Attorney Lynch stating that he rest his case at that meeting . Now at this new meeting Attorney Lynch would like to re-open his case as he has evidence to clear up from his witness. Richard Carrubba . Attorney Silva did not agree.to have him reopen his case as Attorney Silva presented a Motion to Dismiss as the petitioners' have failed to meet the required elements of proof to support the findings of the Special Use Petition and Variance to the provisions of Article 9 Section 2 of Town Ordinance . The board voted 4-1 for Attorney Lynch to reopen his case for 15 minutes so that his real estate expert could clarify an answer he had stated to Attorney Silva during his testimony.

Under the Town Solicitor's advise the Chairman of the Zoning Board stated that Mr. Silva's Motion to Dismiss will be taken under

consideration by the Board when all testimony is complete.. Attorney Silva is representing Mrs. Rose Nunes an abutter. He calls his first witness Exhibit# 1-Peter Scotti Real Estate resume.

#Exhibit 2- A (3) page cover letter of his findings and stated In his opinion that the Board

Must deny both of these petitions of a Variance and Special Use Permit. As they do not meet the requirements in accordance with the standards set forth in the Zoning Ordinance. # Exhibit 3- (4 photos) showing South Side of K .J'S upper parking lot- Looking North, South, East and West.

Exhibit 4- picture showing back deck.

Attorney Silva introduced Mrs. Rose Nunes the abutter has been living in her home most of her 80 and more years and stated that K.J.'S Pub property had applied to the Zoning Board in 1973 for a sub division and applied again 1994, 1997 for a variance, 2ND floor, 1999 roof change, and 2000 a variance to merge Lot 169 for parking .

Exhibit 5 -Copies from Zoning Officer showing dates of 9 cases where K.J'S had applied for Page 3

over the years for variances , Mr. Gullison part owner of K.J.'S spoke on his petition.

Attorney Robert Silva again Motion to Dismiss as K.J.'S is looking for economical gain .

Attorney Lynch stated that the board should deny Mr. Silva's motion.

A motion was made to adjourn

Meeting adjourned 9:50 P.M.

Respectfully Submitted

Lucy R. Levada

Secretary